IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

OP.No. 26573 of 1999(L)

PETITIONERS:

1. **S.EASWARAN NAMBOODIRI, KOITHAPPALLY ILLOM, CHENNITHALA VILLAGE, MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.**

2. **E.S.NAMBOODIRI, KOITHAPPALLY ILLOM, CHENNITHALA VILLAGE, MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.**

3. **E.EASWARAN NAMBOODIRI, KOITHAPPALLY ILLOM, CHENNITHALA VILLAGE, MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.**

***ADDL.R4 IS IMPLEADED:**

R4. SUBADRA ANTHARJANAM, W/O.KRISHNAN NAMBOOTHIRI, RESIDING AT CHANGANASSERY, KOTTAYAM.

(*ADDL.R4 IS IMPLEADED AS PER ORDER DTD. 13/09/2006 IN I.A.NO. 18743/2005)

BY ADV. SRI.GOVIND K.BHARATHAN
SMT. M.HEMALATHA
SMT. USHASAI.S.

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DISTRICT COLLECTOR, ALAPPUZHA DISTRICT.**

3. **THE SPECIAL TAHSILDAR (LAND ACQUISITION), MAVELIKKARA, ALAPPUZHA DISTRICT.**

4. **THE REVENUE DIVISIONAL OFFICER, CHENGANNUR.**

BY GOVERNMENT PLEADER SRI. BASANT BALAJI for R1 to R4

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.44885/1999 IN O.P.NO.26573/1999 L

DISMISSED

30/10/2007 **SD/- K.PADMANABHAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF NOTIFICATION DTD. 26/11/1997 ISSUED BY THE 1ST RESPONDENT.**

EXT.P2A: **PHOTOGRAPH, WHICH SHOWS THE FAMILY PRIEST WORSHIPS AT THE SARPAKAVU.**

EXT.P2B: **PHOTOGRAPH ,.....DO.....**

EXT.P2C: **PHOTOGRAPH, ...DO.....**

EXT.P2D: **PHOTOGRAPH, ...DO.....**

EXT.P2E: **PHOTOGRAPH, ...DO.....**

EXT.P3A: **COPY OF LETTER FROM SRI.M.V.SUBRAMANIAN NAMBOODIRI MANNARASALA ILLOM.**

EXT.P3B: **COPY OF LETTER FROM SRI.P.SSREEDHARAN NAMBOODIRI DTD. 14/10/1999.**

EXT.P4: **COPY OF LETTER FROM THE YOGAKSHEMA SABHA PROTESTING THE MOVE TO ACQUIRE SARPAKAVU DTD. 11/10/1999.**

EXT.P5: **COPY OF MASS PETITION, PREFERRED BY THE RESIDENTS OF THE PREMISES OF THE PETITIONERS AND NAVODAYA VIDYALAYA.**

EXT.P6: **COPY OF A PLAN (NOT SCALE) OF LAND, WHICH SHOWS THE PLOT TO BE ACQUIRED.**

EXT.P7: **COPY OF REPRESENTATIONS/OBJECTIONS TO THE PROPOSED ACQUISITION TO THE HONOURABLE MINISTER FOR REVENUE SUBMITTED BY THE PETITIONERS.**

EXT.P8: **COPY OF NOTICE FROM THE 1ST RESPONDENT NO.57453/B3/ 98/REV. DTD. 16/09/1998.**

KSS **....2/-**

EXT.P9: COPY OF COMMUNICATION NO.84102/B3/98/REV. DTD. 16/12/1998 ISSUED BY THE 1ST RESPONDENT.

EXT.P10: COPY OF NOTIFICATION NO.25477/D1/98/G.EDN.DTD. 21/06/1999 PUBLISHED IN THE KERALA GAZETTE BY THE 1ST RESPONDENT.

EXT.P11: COPY OF REPRESENTATION TO THE DISTRICT COLLECTOR ALLEPPEY DTD. 30/08/1999 SUBMITTED BY THE PETITIONERS.

EXT.P12: COPY OF THE DEATH CERTIFICATE OF THE 1ST PETITIONER.

EXT.P13A & P13B: COPIES OF THE RELEVANT PAGES OF THE SCHOOL MAGAZINE OF THE JAWAHAR NAVODAYA VIDYALAYA FOR THE YEARS 1999 AND 2003.

EXT.P14A & P14A: PHOTOGRAPHS OF THE ROAD AND THE CULVERT.

/TRUE COPY/

P.A.TO JUDGE

KSS

K.PADMANABHAN NAIR, J.

O.P.No.26573 of 1999

Dated this the 30th October, 2007.

J U D G M E N T

Petitioners are owners of 2.7 acres of dry land situated in Survey No.40/7 and 40/7-10 of new sub division and 34 cents of wet land in Survey No.40/6 of Chennithala Village, Mavelikkara Taluk. The property belonged to a family consisting of 17 members. It is averred that the property comprised in Survey No.40/4 and owned by the petitioners family was also acquired for the purpose of Central Reserve Police Camp. It is averred that after acquisition, that land was used for the purpose of construction of the Jawahar Navodaya Vidyalaya. Petitioners had voluntarily surrendered more than three acres of dry land for the purpose of establishing Jawahar Navodaya Vidyalaya, based on the request made by local M.L.A. and the District Collector. First respondent had issued a notification under Section 4(1) of the Land Acquisition Act, (for short 'the Act') read with Section 17(4) of the Act, for the purpose of acquiring 25 cents of dry land and 34 cents of wet land owned by the petitioners for the use of Navodaya Vidyalaya. It was alleged that Section 17(4) of the Act was invoked only to see that right given to the petitioners under Section 5(A) of the

Act shall not be invoked. It is averred that the properties sought to be acquired is a 'Sarpakavu', (a place wherein Snake Gods are worshiped), which is in existence from time immemorial. It is stated that there are thick vegetation which gives the appearance of a forest. The trees standing in the area is considered as very sacred and no tree in the area was being cut and the family priest worship at this Sarpakavu. It is averred that almost in all ancient families in this Country was having its own Sarpakavu. It is further submitted that Navodaya Vidyalaya had already been established and is functioning. The petitioners have surrendered enough land for the same. If any land is required, other alternate sites very close to the property now sought to be acquired are available. On an earlier occasion, petitioners have filed a petition before the Government stating all these reasons and the Government took a decision not to acquire the land of the petitioners, but subsequently, the Government has reversed that decision and decided to proceed with the acquisition. Petitioners have filed representations before the District Collector which was not considered. Hence, this Original Petition to quash Exts.P1, P9 and P10 orders of the first respondent.

2. For and on behalf of the 4th respondent, the Headquarters Deputy Tahsildar, has filed a counter affidavit, contending that acquisition proceedings were initiated based on requisition received from the Chairman, Vidyalaya Samithi, Jawahar Navodaya Vidyalaya, Chennithala. The decision was to acquire 54.75 Ares of land comprised in various survey numbers and a notification under Section 4(1) of the Act was issued on 26.11.1997. It was also contended that the draft declaration was approved and published on 21.6.1999. It was contended that neither the petitioners nor their family members are residing in the property, and the entire land is lying vacant as overgrown with bushes and not being cultivated. It was admitted that the first petitioner gave 18.70 Ares of land and one Narayanan Namboodiri gave 1.05 Ares of land to establish Navodaya Vidayalaya on negotiation but they were paid adequate compensation. It was also admitted that land acquired for the establishment of Armed Reserve Camp was also used for the establishment of Navodaya Vidayalaya. It was contended that the land acquisition was for a bonfide Government purpose. More than 471 students are residing in temporary sheds and they have to be accommodated in the newly constructed Dormitory and they have to use the new dining hall. It

was also contended that staff quarters and water tank are also away from school compound. It was further stated that there was no 'Sarpakavu' in the land under acquisition, and the land is lying as vacant, and it was in an abandoned stage. There was no cultivation also. There were no idols in the land. Neither the petitioners nor their family or public were conducting any worship in the 'Sarpakavu'. It was contended that the school main compound, Dormitories and staff quarters were in scattered manner, and to form a compact school compound, and it is essential to acquire the land belonging to the petitioners also. It was contended that the petitioners did not file any petitions before the Land Acquisition Officer and they filed a petition before the Honourable Revenue Minister, and on that petition, there was a direction to exclude the petitioners' land. Later the Government had withdrawn the above order, and directed to proceed with the acquisition proceedings. So, a draft declaration was issued. It was contended that the Government has every authority to acquire land and invocation of Section 17(4) of the Act was also because of the emergency. It was contended that the public notice and Form-B was

published in the locality on 15.7.1998 and draft publication was published on 21.6.99. Hence, the respondents pray for a dismissal of the Original Petition.

3. During the pendency of the proceedings, first petitioner died and the additional 4th petitioner was impleaded as the legal representative of the first petitioner. Subsequently, petitioners have filed an affidavit on 16.12.1995 stating that Government had later on acquired properties of one Mrs.Elyamma comprised in Sy.No.40/5-9 consisting of an extent of 15 ares and 90 links, and after the acquisition of the property, the construction of a new school buildings were completed. It was also averred that though initially school was functioning with temporary structures with 4.28 acres of land donated by the State Government, now the school is in possession of 13 Acres of land. It was averred that academic block and residential complex were inaugurated by the then Honourable Minister for Human Resources Development Sri.Murali Manohar Joshi on 28.8.1998, and the construction has now been completed. It was averred that the purpose of acquisition of 13.60 Ares of wet land in Survey No.40/6 and 9.50 ares in re-survey No.40/7 of Chennithala

Village was for providing the link road to connect the two main plots and three separate plots comprising Navodaya Vidyalaya property. A pucca road was constructed in the subsequently acquired land which provides accessibility. A culvert was also constructed. It was averred that in view of the subsequent developments, there is no necessity to acquire the Sarpakavu belonging to the petitioners.

4. The learned counsel appearing for the petitioner has argued that invocation of Section 17(4) of the Act is with malafides. It is argued that the power was invoked only to see that the petitioners do not get opportunity to raise their objections. It is contended that when Ext.P1 notification was issued, petitioners filed a petition before the Minister, but that was treated as a petition filed before the State, and the Government had issued Order No.57451/B3 dated, 16.9.1998, and a decision was taken to exclude the land owned by the petitioners. It is argued that thereafter without any notice, the Government has filed another Order, No. 84102/B3/98/Revenue, dated 16.12.1998, withdrawing its earlier decision to withdraw from acquisition and issued a direction to the Collector to proceed with the matter. It is argued that by issuing Ext.P8 order, Ext.P1 notification issued under Section 4

(1) of the Act and also Section 17(4) of the Act had elapsed, and thereafter, by issuing Ext.P9, the same cannot be revived. It is argued that that is a strange procedure unknown to law. It is argued that if the Government want to acquire the land of the petitioner, a fresh notification under Section 4(1) of the Act ought to have been issued. It is also argued that Ext.P10 declaration under Section 6 of the Act has no existence, and if the Government want to proceed with the acquisition, the only course open to them is to issue a fresh notification under Section 4(1) of the Act. It is also argued that there is no order of stay of the proceeding. It is argued that order of stay was continued to the dispossession of the petitioners alone. It is argued that no award is so far passed, and in view of the provisions of Section 11 (A) of the Act, the entire proceedings have again lapsed. It is argued that once this writ petition was dismissed for default on 13.9.2006, subsequently that was restored as per order passed in M.J.C.No.558/2006, dated 3.10.2007, and though there was no writ petition or interim order of any kind for more than one year, the Land Acquisition Officer has not taken any steps, and hence, the entire proceedings lapsed and is to be quashed.

5. The writ petition was filed on 26.10.1999 challenging Section 4(1) notification, as well as Section 6(1) declaration. It is seen that when Ext.P1 notification under Section 4 (1) read with Section 17(4) of the Act was issued, petitioners have filed a petition before the Minister. That petition was considered by the Government and Ext.P8 order was passed. Petitioners were informed that District Collector, Alleppey, was directed to withdraw the land from acquisition. That letter was dated 16.9.1998. But that decision was withdrawn as per Ext.P9, dated 16.12.1998. I do not think it is necessary to consider how far the notification once withdrawn can be restored by another Executive Order in this proceedings. After issuing Ext.P9, first respondent has issued Ext.P10 declaration under Section 6(1) of the Act on 21.6.1999. This Original Petition was filed on 26.10.1999 challenging Exts.P1, P9 and P10 orders of the first respondent. Along with the Original Petition, petitioners have filed C.M.P.No. 44885 of 1999 for stay of all steps in implementation and in furtherance of Exts.P1, P9 and P10. This Court stayed dispossession of the petitioners alone on 28.10.1999. That order was subsequently extended until further orders. Further, as I have already stated, the Original Petition was dismissed for default on

13.9.2006. It was restored to file on 3.10.2007. In the additional affidavit filed by the petitioners, it is averred that an alternate site was acquired and as such it is not necessary to acquire the land of the petitioners. I am of the view that in view of the contentions raised by the petitioners and subsequent developments, it is only just and proper to quash that part of the notification invoking Sections 17(4) and 6(1) declaration, so far as petitioners alone is concerned, and direct the first respondent to conduct an enquiry under Section 5(a) of the Act, so far as the petitioners alone are concerned.

6. In **Union of India and Others v. Mukesh Hans and others** (AIR 2004 SC 4307), it was held as follows:-

> "The mere existence of an urgency under S.17(1) or unforeseen emergency under S.17(2) would not by themselves be sufficient for dispensing with S.5-A inquiry. It that was not the intention of the Legislature then the latter part of sub-section (4) of S.17 would not have been necessary and the Legislature in S.17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically. S.5-A inquiry will be dispensed with. But then that is not language of the section which requires the appropriate Government to further consider the need for dispensing with Section5-A inquiry in spite of the existence of

> unforeseen emergency. This understanding as to the requirement of an application of mind by the appropriate Government while dispensing with S.5-A inquiry does not mean that in and every case when there is an urgency contemplated under S.17 (1) and unforeseen emergency contemplated under S.17(2) exists that by itself would not contain the need for dispensing with S.5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under S.17(1) or the unforeseen emergency under S.17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under S.5-A but then there is need for application of mind by the appropriate Government that such an urgency for dispensation of the S.5-A inquiry is inherent in the two types of urgencies contemplated under S.17 (1) and (2)."

It further held as follows:-

> "Right of representation and hearing contemplated under S.5-A is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. Therefore if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of S.5-A."

7. So, it is only just and proper that the first respondent conduct an enquiry under Section 5-A of the Act in this case. For that purpose, petitioners shall file their objections to the notification raising all their contentions including their argument that the entire land acquisition proceedings have lapsed on account of the withdrawal of the same, and also in view of the provisions contained under Section 11-A of the Act. Such objection shall be filed within three weeks from the date of receipt of a copy of this judgment. If such an objection is filed, the Land Acquisition Officer shall conduct an enquiry under Section 5-A of the Act and take a decision, with due notice to the petitioners and requisitioning authority, as expeditiously as possible. Until such a decision is taken, petitioners shall not be dispossessed from the land in their possession.

In the result, writ petition is disposed of in the following manner. The notification under Section 17(4) of the Act and Ext.P10 declaration under Section 6(1) of the Act, so far as it relates to the petitioners are quashed. Petitioners shall file their objection to Ext.P1 notification before the Land Acquisition Officer within three weeks from the date of receipt of a copy of this judgment. The Land Acquisition

Officer shall consider and dispose of the application, with due notice to the petitioners and the requisitioning authority, in accordance with law. Until such a decision is taken, petitioners shall not be dispossessed. It is also made clear that this is a concession given to the petitioners alone, and no other person whose lands were included in Ext.P1 notification or Ext.P10 declaration can claim the same benefit, on the strength of this judgment.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

O.P.No.26573 of 1999

J U D G M E N T

Dated: 30th October, 2007.